

EXHIBIT D



CULPEPPER IP, LLLC

ATTORNEY AT LAW

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PATENTS, TRADEMARKS & COPYRIGHTS

Via E-mail <abuse@rcn.com>

October 19, 2020

Via Certified Mail

RCN Telecom Services, LLC
ATTN: Legal Dep't
650 College Road, Suite 3100
Princeton, NJ 08540

Via Certified Mail

CT Corporation System
Registered Agent for RCN Telecom Services, LLC
820 Bear Tavern Road
West Trenton, NJ 08628

Re: Copyright Infringement at Internet Protocol ("IP") addresses including but not limited to
65.78.99.191, 207.172.202.107, 209.94.139.49, 209.150.44.177

My Reference: 20-023T

Case Number: 19cv169-LEK-KJM (District of Hawaii)

Dear Sir or Madam,

As explained below, I am writing to you regarding the Internet service RCN Telecom Services, LLC ("RCN") provides to subscribers including but not limited to the IP addresses ("subscribers") mentioned below. Please note that these IP addresses are shown merely to illustrate the problem. As explained more fully below, this issue extends to over 1,800 RCN subscribers.

My law firm represents the owners of the copyright protected motion pictures including but not limited to those shown below:

NO.	OWNER	MOTION PICTURE
1	Fallen Productions, Inc.	<i>Angel Has Fallen</i>
2	HB Productions, Inc.	<i>Hellboy</i>
3	Hunter Killer Productions, Inc.	<i>Hunter Killer</i>
4	Rambo V Productions, Inc.	<i>Rambo V</i>

Each of the motion pictures is an original work of art that was produced and marketed at great effort and expense of the owner.

On behalf of Hunter Killer Productions, Inc., my law firm filed a lawsuit here in Hawaii (1:19-cv-169) against operators of movie piracy websites under the name “YTS” for copyright infringement, contributory copyright infringement and intentional inducement.

We have determined that over 1,800 of your subscribers has repeatedly infringed the copyrights of my clients’ motion pictures via the YTS website, among other means. Moreover, we have determined that our owners’ agents have sent over 5,400 notices styled per the Digital Millennium Copyright Action (“DMCA”) to RCN concerning hundreds of IP addresses associated with confirmed infringing activity. However, it appears that RCN has failed to terminate any repeat infringers or take any meaningful actions despite RCN receiving numerous, consistent DMCA notices.

To illustrate a concrete example of the damage done to our clients, in the months of August and July, 2020 alone, the owners’ agent sent 41 notices regarding confirmed infringement of the motion picture *Angel Has Fallen* at the IP address 65.78.99.191. However, RCN failed to terminate this account or take any meaningful steps to prevent continuing infringing activity. Examples of other IP addresses and the number of notices sent is provided below:

IP	Notices Sent
207.172.202.107	145
209.94.139.49	101
209.150.44.177	95
66.44.13.123	83
216.80.112.90	80
207.172.178.64	69

Nearly all of the file titles of the infringing copies have had the copyright management information (“CMI”) such as the title of the Work modified or altered to falsely include a reference to a piracy website. For example, the infringing file my clients’ agent told RCN about in the Notice shown in Exhibit “1” has the title: “Hunter Killer (2018) [WEBRip] [720p] [YTS.AM]”. Similarly, the infringing file my clients’ agent told you about in the Notice shown in Exhibit “2” has the title: “Rambo.Last.Blood.2019.1080p.KORSUB.HDRip.x264.AAC2.0-STUTTERSHT”. The CMI has been modified/altered to falsely refer to the notorious piracy websites YTS and the piracy group STUTTERSHT in violation of 17 U.S.C. §1202 (“DMCA violations”). My clients did not provide file titles that promote movie piracy websites or piracy groups.

RCN has no safe harbor from liability for Copyright Infringement

The DMCA provides a safe harbor for qualified service providers from liability from copyright infringement. A requirement for this safe harbor is that the service provider reasonably implement, and inform subscribers and account holders of the service provider’s system or network of, a policy that provides for the *termination* in appropriate circumstances of subscribers and account holders of the service provider’s system or network who are repeat infringers. *See* 17 U.S.C. § 512(i)(1)(A). Accordingly, RCN fails to qualify for the safe harbor because RCN has not terminated the subscriber accounts despite the multiple notifications sent by my clients’ agents.

Accordingly, my clients and I believe that RCN may be liable for these infringements of my clients’ copyrights in violation of federal law under the Copyright Act, 17 U.S.C. § 501. Remedies available to my clients include: an injunction against further infringement; actual and statutory damages of up to \$150,000/motion picture; and costs and attorney’s fees.

Further, my clients and I also believe that RCN may be secondarily liable for its subscribers’ DMCA violations under 17 U.S.C. § 1202. Remedies provided by 17 U.S.C. § 1203(c) include statutory damages up to \$25,000 per DMCA violation. For example, above I illustrated at least two DMCA violations (YTS and STUTTERSHT).

Nonetheless, my clients would like to resolve this issue outside of litigation if possible. To do so, we request that: (1) RCN agrees to immediately terminate all Internet service to the accounts for which my clients’ agents have sent more than six notices including the account discussed in this letter; (2) RCN agrees to take the appropriate action to terminate subscriber accounts in response to all further copyright notifications of more than a predetermined number received from my clients’ agents; (3) RCN agrees to pay a portion of my clients’ damages; and (4) RCN agrees to provide subscriber identification information for IP addresses including those above and others for which my clients’ rights have been infringed.

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I look forward to receiving your response by November 16, 2020 so that we can discuss this issue further. My clients would like to resolve this matter amicably but will consider any and all legal action necessary to protect their valuable intellectual property rights under federal and state law. This letter is written without prejudice to the rights and remedies of our client, all of which are expressly reserved.

Sincerely,

/ksc/ 

Kerry S. Culpepper

kculpepper@culpepperip.com

Attachment: Exhibits "1" and "2"

joshua.lee@culpepperip.com

From: notice@dmcagateway.com
Sent: Monday, June 8, 2020 10:14 PM
To: abuse@rcn.com
Subject: Notice of Claimed Infringement [Case No. 41683211114]

-----BEGIN PGP SIGNED MESSAGE-----

Hash: SHA256

Notice of Claimed Infringement

Notice ID: 41683211114

Notice Date: 2020-06-09 08:13:32

Dear Sir or Madam:

This message is sent on behalf of Hunter Killer Productions, Inc..

Under penalty of perjury, I assert that PML Process Management Ltd. is authorized to act on behalf of the owner of the exclusive copyrights that are alleged to be infringed herein.

Hunter Killer Productions, Inc. owns the copyrights to the movie Hunter Killer. The unauthorized download and distribution of this file by your IP address constitutes copyright infringement.

Please see below details for the infringements:

Protocol: BITTORRENT

Infringed Work: Hunter Killer

Infringing FileName: Hunter Killer (2018) [WEBRip] [720p] [YTS.AM] Infringing FileSize: 1092418176

Infringer's IP Address: 209.150.44.177 Infringer's Port: 38521 Initial Infringement Timestamp: 2020-06-08 06:32:55

And, you're also creating a security risk on your computers, devices and networks when you download unauthorized movies or allow others to do so from your Internet connection.

We respectfully ask that you stop infringing and redistributing Hunter Killer Productions, Inc. copyright protected content, and take the proper steps to secure your Internet so that others do not infringe and redistribute our content as well.

We have a good faith belief that use of the copyrighted material detailed above is not authorized by the copyright owner, its agent, or the law. In addition, we have a good faith subjective belief that the use does not constitute fair use. The information in this notice is accurate and we state, under penalty of perjury, that we are authorized to act on behalf of the owner of the copyright that is allegedly infringed. This letter is not a complete statement of Hunter Killer Productions, Inc.'s rights in connection with this matter, and nothing contained herein constitutes an express or implied waiver of any rights or remedies of Hunter Killer Productions, Inc. in connection with this matter, all of which are expressly reserved.

We appreciate your assistance and thank you for your cooperation in this matter.

Respectfully,

Catherine Hyde
PML Process Management Ltd.
notice@dmcagateway.com
Address:
Lordou Vylonos, 61-63, Floor 5
Larnaca 6023
Cyprus

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        <Email>notice@dmcagateway.com</Email>
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        <Entity>RCN</Entity>
        <Address>650 College Rd. East, Princeton, NJ 08540, US</Address>
        <Phone>+1-888-972-6622 </Phone>
        <Email>abuse@rcn.com</Email>
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joshua.lee@culpepperip.com

From: notice@dmcagateway.com
Sent: Friday, October 9, 2020 9:17 PM
To: abuse@rcn.com
Subject: Notice of Claimed Infringement [Case No. 43095098776]

-----BEGIN PGP SIGNED MESSAGE-----

Hash: SHA256

Notice of Claimed Infringement

Notice ID: 43095098776

Notice Date: 2020-10-10 07:17:02

Dear Sir or Madam:

This message is sent on behalf of Rambo V Productions, Inc..

Under penalty of perjury, I assert that PML Process Management Ltd. is authorized to act on behalf of the owner of the exclusive copyrights that are alleged to be infringed herein.

Rambo V Productions, Inc. owns the copyrights to the movie Rambo: Last Blood. The unauthorized download and distribution of this file by your IP address constitutes copyright infringement.

Please see below details for the infringements:

Protocol: BITTORRENT

Infringed Work: Rambo: Last Blood

Infringing FileName: Rambo.Last.Blood.2019.1080p.KORSUB.HDRip.x264.AAC2.0-STUTTERSHIT

Infringing FileSize: 3437872497

Infringer's IP Address: 209.150.44.177

Infringer's Port: 41915

Initial Infringement Timestamp: 2020-10-09 19:51:44

And, you're also creating a security risk on your computers, devices and networks when you download unauthorized movies or allow others to do so from your Internet connection.

We respectfully ask that you stop infringing and redistributing Rambo V Productions, Inc. copyright protected content, and take the proper steps to secure your Internet so that others do not infringe and redistribute our content as well.

We have a good faith belief that use of the copyrighted material detailed above is not authorized by the copyright owner, its agent, or the law. In addition, we have a good faith subjective belief that the use does not constitute fair use. The information in this notice is accurate and we state, under penalty of perjury, that we are authorized to act on behalf of the owner of the copyright that is allegedly infringed. This letter is not a complete statement of Rambo V Productions, Inc.'s rights in connection with this matter, and nothing contained herein constitutes an express or implied waiver of any rights or remedies of Rambo V Productions, Inc. in connection with this matter, all of which are expressly reserved.

We appreciate your assistance and thank you for your cooperation in this matter.

Respectfully,

Catherine Hyde
PML Process Management Ltd.
notice@dmcagateway.com
Address:
Lordou Vyrinos, 61-63, Floor 5
Larnaca 6023
Cyprus

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    <Service_Provider>
        <Entity>RCN</Entity>
        <Address>650 College Rd. East, Princeton, NJ 08540, US</Address>
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